

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY (VICE PRESIDENT)
AND
SHRI JAGADISH (ACCOUNTANT MEMBER)

I.T.A. No. 6514/Mum/2024
Assessment Year: 2017-18

Western Industrial Co-operative Estate Limited Plot No 11 12 Administrative Building MIDC Central Road Andheri East Maharashtra - 400093 PAN:AAAAW0335M	Vs.	DCIT Circle 32(1) Room No 202, Kautilya Bhavan, Block G, Bandra Kurla Complex Maharashtra-400051
(Appellant)		(Respondent)

&

I.T.A. No. 6324/Mum/2024
Assessment Year: 2017-18

Western Industrial Co-operative Estate Limited Plot No 15 16, Administrative Building MIDC Central Road Maharashtra - 400093 PAN:AAAAW0335M	Vs.	ACIT, Circle 32(1) Kautilya Bhavan, Bandra Kurla Complex Maharashtra-400051
(Appellant)		(Respondent)

Appellant by	Shri Satyaprakash Singh
Respondent by	Shri Arun Kanti Datta, CIT D.R.

Date of Hearing	09.12.2025
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Date of Pronouncement	17.12.2025
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ORDER

Per: Shri Jagadish, A.M.:

Aforesaid appeals filed by the assessee for Assessment Year (AY) 2017-18 arises out of the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 15.10.2024 & 17.10.2024.

ITA No. 6324/Mum/2024

2. The assessee has filed return of income showing total income of Rs.48,14,110/- in the status of Co-operative Society, including the income of Rs 66,76,051 - under the head income from house property after claiming sub-letting charges of Rs. 7,92,084/- and standard deduction @30% of annual value u/s 24(a) of the IT Act. The Assessing Officer, (A.O) in the assessment order passed u/s 14(3) of the Act, assessed the income shown under the head house property as income from other sources disallowing 30% of standard deduction claimed under house property of Rs 87,83,783/- and further disallowing sub-letting charges of Rs.7,92,084/-. The A.O has also disallowed interest on borrowed capital of Rs.1,38,19,443/- claimed on construction of the property as the assessee failed to establish the nexus between the interest on borrowed capital and the income has not been assessed under house property.

3. The assessee in the return of income has also shown loss from testing charges from laboratory and other miscellaneous income after claiming expenses of Rs 31,78,068/- under the head

income from other sources. The A.O disallowed the entire expenses towards testing charges from laboratory.

4. The assessee has also claimed deduction u/s 80P(2)(e) of Rs 2,16,000/- for storage charges from members. The A.O disallowed the claim observing it as claim on interest income of Rs.2,16,000/- received from Co-operative Banks which is not allowed u/s. 80P(2)(d) of the Act.

5. On appeal the Ld.CIT(A), after analysing the financials has upheld the house property income assessed as income from other sources. The Ld. CIT(A), after observing that most of companies from whom leave and license fee have been received have deducted TDS u/s 194IB, has gone into income expenditure statement of the assessee, where rental has been categorised under the head miscellaneous income held it as income from other sources. The Ld. CIT(A), consequently also upheld the disallowances of 30% of standard deduction, subletting charges and interest claimed on borrowed capital. The Ld. CIT(A) has also upheld the disallowances of entire expenditure of Rs 31,78,068/- claimed under income from other sources as not relatable to laboratory charges. The Ld. CIT(A) on disallowances of Rs 2,16,000/- held that storage charges claimed u/s 80P(2)(e) is in the nature of leave & license fee and is not allowable as the income has not been offered under the head business. The assessee filed appeal against the order of Ld. CIT(A) raising following grounds:

“1. The learned Commissioner of Income Tax (Appeals) erred in holding that rental income of Rs.3,19,40,790/- earned by the appellant from letting of immovable properties, on leave and license basis, owned by it

is chargeable to tax under the head "Income from Other Sources" and not under the head "Income from House Property".

2. The learned Commissioner of Income Tax (Appeals) erred in holding that appellant is not entitled to standard deduction of 30% under the head "Income from House Property".

3. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing deduction on account of sub-letting charges paid by the Appellant to Maharashtra Industrial Development Corporation (MIDC) amounting to Rs. 7,92,084/-

4. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing deduction on account of interest on borrowed funds amounting to Rs. 1,38,19,443/- utilised in construction of immovable property under the head income from house property.

5. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing deduction on account of expenses incurred amounting to Rs. 31,78,068/- in earning testing and parking charges under the head income from other sources.

6. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing deduction under section 80-P of the Act on account of storage charges earned by the appellant amounting to Rs. 2,16,000/ & Rs. 50,000/-."

6. Ground no. 1 to 3 relate to confirming the rental income shown by the assessee under the head income from house property as income from other sources.

7. The Ld.AR at the outset, has submitted that assessee has been consistently showing the rental income under the head house property income and the same has been accepted by the department. The Ld AR further submitted that there is no change in the nature of property let out on leave and license and majority of the tenants are also continuing. The Ld AR further submitted that the issue is covered in favour of assessee in its own case by

the decision of *Hon'ble Tribunal* for in ITA No.6071/Mum/2019 for A.Y 2013-14, dated 14.07.2021, where the rental income was shown under the head house property and the A.O after accepting the income under house property, had disallowed the sub-letting charges of Rs.7,78,420/- paid to Maharashtra Industrial Corporation and *Hon'ble Tribunal* has deleted the disallowances made by the A.O.

8. The Ld.DR on the other hand relied on the order of A.O and Ld.CIT(A) and submitted that the issue of house property was not before the *Hon'ble ITAT* and therefore issue is not covered.

9. We have heard the rival submissions and perused the material on record. The assessee is a registered co-operative society under Maharashtra State Co-operative Society Act 1961, located in MIDC, Andheri (E) Mumbai. The MIDC has allotted approx 6 acres area to the society and the society divided the same into 15 sub plots and constructed 16 buildings accommodated by 29 members. The same has been leased to members for 95 years and 1 building is allocated for the administrative purpose of the society around 17,500 Sq. feet constructed area. The society's main income is through lease out of the administrative building by sub-letting. The Assessee has been showing income from leasing out of administrating building under the head income from house property from the beginning and there has not been any change in the activities of the assessee in the relevant previous year. However, the A.O in this assessment year has changed the stand and assessed the rental income as income from other sources. The A.O has misdirected himself holding the rental income as income from other sources,

observing that the total quantum receipt is from advertising agency and mobile tower operators, contrary to the fact that the major rental income have been received from M/s Kotak Mahindra Bank Current Chest of Rs 1,13,99,220 , Renaissance Global Limited Jewellery of Rs 43,22,500/-, M/s Inter Gold (India) Pvt. Ltd of Rs 35,66,000/-, M/s MBMG Diamonds Ltd of Rs 36,40,000/- for letting out the area in administrative building. The Ld. CIT(A) also after analysing the financial statement held that assessee in income and expenditure statement has shown the rental income under income from other sources, without going into substance of the nature of receipt. The assessee has been showing income from the letting out the very same property under the head income from house property and the same has been accepted in all the preceding years. In fact, for A.Y 2013-14, where A.O while accepting the income under head house property, has not allowed of sub-leasing of Rs.7,92,084/-paid to MIDC, the *Hon'ble Tribunal* in *ITA No. 6079/Mum/2019* has deleted the disallowances. The *Hon'ble Supreme Court* in *Azadi Bachao Andolan 26 ITR 706* has emphasized the need to follow the rule of consistency, especially where the facts and circumstances remain unchanged. We therefore reverse the finding of A.O and Ld. CIT(A) and direct A.O to assess the income under house property.

10. As regard to disallowance of 30% of annual value u/s. 24(a), the relief is consequential as we have held the rental income to be assessed under the head house property.

11. As regard to disallowances of the sub-letting charges of Rs.7,92,084/- paid to MIDC , the tribunal in the A.Y 2013-14

has already adjudicated the issue and deleted the disallowances. A.O, is therefore directed to delete the addition. Ground no. 1 to 3 are accordingly allowed.

12. Ground no. 4 is relating to disallowances of interest from borrowed fund amount to Rs.1,38,19,443/- u/s. 24(b) for construction of the property.

13. The Ld.AR has submitted that the assessee has borrowed fund from NKGSB Co-operative Bank Limited for construction of the property and subsequently, the loan was repaid from borrowing from Federal Bank and then DHFL . The assessee has claimed interest for construction of house property while computing the income under the head house property. The A.O has disallowed the interest u/s 24(b) as he assessed the income under head income from other sources. The Ld. CIT(A) upheld the disallowances but directed A.O to verify and allow the same in case assessee offers the income under the head other sources after verification. As we have already held that the income is to be assessed under the head income from house property, the assessee is eligible for deduction of interest u/s.24(b) of the Act. The assessee has been allowed the claim of interest u/s 24(b) in the preceding years, A.O is accordingly directed to allow the interest on the borrowed capital after due verification. Ground 4 is accordingly allowed.

14. Ground No. 5 is relating to confirming the disallowances of expenses of Rs. 31,78,068/- relating to income from testing charges made by the A.O.

15. The Ld.AR at the outset, has submitted that the above expenditure has not been verified and therefore this issue

requires examination by the A.O. The Ld. DR did not oppose Ld. AR on this account.

16. We have considered rival submission and gone through the material available on record. Assessee has shown testing charges from laboratory of Rs. 7,03,590/- and miscellaneous income /parking charges totalling to Rs. 13,66,461/- and claimed expenditure incurred of Rs 31,78,068/-. The AO/CIT(A) have disallowed entire expenditure holding it expenditure relating to testing charges was not verifiable. As the expenditure has not been examined by the A.O/CIT(A), we restore the issue of allowability of expenditure to the A.O for fresh consideration. The A.O shall provide proper opportunity to the assessee before making any disallowances.

17. Ground No. 6 is relating to the disallowances of Rs. 2,16,000/- u/s.80P(2)(d) made by the A.O holding it interest from Co-operative Bank. The A.O in the assessment order has disallowed the claim of Rs.2,16,000/- made u/s. 80P(2)(e), holding that interest earned from deposits with Co-operative Bank Limited is not eligible for deduction as held by *Hon'ble Supreme Court* in the case of *PCIT vs. Totagars Co-operative sale society*. The Ld. CIT(A) upheld the disallowances holding that storage charges is in the nature of leave and license fee only, so not allowable u/s. 80P(2)(e) .

18. The Ld.AR has argued that the assessee is Co-operative Society and the interest income has been earned from Co-operative Bank which is a Co-operative Society and therefore eligible for deduction u/s.80P(2)(d). The Ld.AR in this respect relied on the case of *ITO vs. MTNL Mumbai Co-operative Credit*

Society Limited ITA 5427/Mum/2024 for assessment year 2017-18 to 2020-21. The Ld.DR relied on the order of Ld.CIT(A).

19. We have heard rival submission and perused the material available on record. The A.O has disallowed the claim of storage charges u/s. 80P(2)(e) as interest from co-operative bank and not allowable u/s. 80P(2)(d). The Ld. CIT(A) held it not allowable as storage charges has been received as fee from leave and licenses from M/s Hiralal Gulabchand Pvt Ltd. We find that assessee has claimed storage charges of Rs 2,16,000/- from members and claimed it u/s 80P(2)(e), but neither A.O nor Ld. CIT(A) has examined the nature and members from whom storage charges have been received. We, therefore, restore the matter back to the file of A.O to examine the issue afresh and allow the claim of deduction u/s. 80P as per law. The ground is therefore allowed for statistical purpose.

ITA No. 6514/Mum/2024

20. The assessee has filed appeal against the order of Ld. CIT(A) confirming the order of AO u/s. 154 of the Act disallowing standard deduction u/s 24(a), which remained to be disallowed in order passed u/s 143(3) of the Act.

21. As we have already adjudicated the allowability of deduction u/s 24(a) in main appeal, this ground becomes infructuous and therefore dismissed.

In the result the appeal filed by the assessee in ITA No. 6324/Mum/2024 stands allowed and appeal filed by the assessee in ITA No. 6514/Mum/2024 become infructuous and therefore dismissed.

Order pronounced in the open court on 17/12/2025

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(JAGADISH)
ACCOUNTANT MEMBER**

Mumbai:

Dated: 17/12/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai